MOTION FILED DEC 12 1962

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 430

ARROW TRANSPORTATION COMPANY, a corporation,
O. J. WALLS, d/b/a O. J. WALLS COMPANY, a corporation,
JOHN D. BAGWELL FARMS AND HATCHERY, INC., a corporation,
CITY OF GUNTERSVILLE, ALABAMA,
Petitioners

v.

SOUTHERN RAILWAY COMPANY, a corporation,
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation,
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a corporation,
SEABOARD AIR LINE RAILROAD COMPANY, a corporation,
Respondents

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF WALLEY MILLING COMPANY

JOHN W. VARDAMAN
1014-17 Commercial National
Bank Building
Anniston, Alabama
Attorney for Walley Milling Company

Of Counsel:
MERRILL, MERRILL, VARDAMAN
& WILLIAMS
1014-17 Commercial National
Bank Building
Anniston, Alabama

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 430

ARROW TRANSPORTATION COMPANY, a corporation,
O. J. WALLS, d/b/a O. J. WALLS COMPANY, a corporation,
JOHN D. BAGWELL FARMS AND HATCHERY, INC., a corporation,
CITY OF GUNTERSVILLE, ALABAMA,
Petitioners

v.

SOUTHERN RAILWAY COMPANY, a corporation,
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation,
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a corporation,
SEABOARD AIR LINE RAILROAD COMPANY, a corporation,
Respondents

MOTION OF WALLEY MILLING COMPANY FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

Walley Milling Company of Oxford, Alabama, files this its Motion for Leave to File a Brief Amicus Curiae in this proceeding and for cause states:

1. Walley Milling Company is a receiver of grain from the middle west and as such has a substantial pecuniary interest in the outcome of this proceeding.

2. Walley Milling Company has a medium-sized feed manufacturing and poultry growing operation located in the same general area as petitioner John D. Bagwell Farms and Hatchery, Inc.

3. As a receiver of grain, and as a potential receiver of grain by rail under the proposed rates, Walley Milling Company fears that its interest and that of the public similarly situated is apt to be lost in the present controversy before this Court, which controversy has taken on the aspect of a fight between carriers; and that no party is likely to adequately represent the interest of Walley Milling Company or of other receivers of grain similarly situated.

WHEREFORE, Walley Milling Company moves that the Court grant it leave to file its Brief Amicus Curiae, copy of which is attached. This Motion dated at Anniston, Alabama, this 10th day of December, 1962.

Respectfully submitted,

JOHN W. VARDAMAN
1014-17 Commercial National
Bank Building
Anniston, Alabama
Attorney for Walley Milling Company

Of Counsel:

MERRILL, MERRILL, VARDAMAN
& WILLIAMS
1014-17 Commercial National
Bank Building
Anniston, Alabama

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 430

ARROW TRANSPORTATION COMPANY, a corporation,
O. J. WALLS, d/b/a O. J. WALLS COMPANY, a corporation,
JOHN D. BAGWELL FARMS AND HATCHERY, INC., a corporation,
CITY OF GUNTERSVILLE, ALABAMA,
Petitioners

v.

SOUTHERN RAILWAY COMPANY, a corporation,
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation,
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a corporation,
SEABOARD AIR LINE RAILROAD COMPANY, a corporation,
Respondents

BRIEF OF WALLEY MILLING COMPANY AS AMICUS CURIAE

Walley Milling Company is a receiver of grain and a manufacturer of feed and by no wise a large one. It is located at Oxford, Ala., in north Alabama, in which area certain of the petitioners are also located.

Walley Milling Company receives most of its grain from the midwest from states as far away as Michigan

and Iowa. Only 10 percent of its grain has ever been on a barge. Although Walley Milling Company is located only sixty miles from the Tennessee River port of Guntersville, 90 percent of the grain received by it arrives direct from the midwest by itinerant and unregulated truck, the rates and charges of which the Interstate Commerce Commission has no control at all (affidavit of Dewey E. Walley, Vice President of Walley Milling Company, R. 24).

It is not our purpose here to offer argument which other parties will undoubtedly make but to point out to this Court the specious nature of the claim of the petitioners. This can readily be seen in the results that would flow from the adoption of their view, results absurd enough in themselves to show that Congress could never have intended what petitioners seek. We leave it to others to brief the technicalities; our purpose is to deal with practicalities.

The suspension proceeding, still before the Interstate Commerce Commission, was a long and complex proceeding with a multitude of contending parties. It was not, and is not, merely a controversy between barges and railroads but it is a proceeding in which large numbers of various segments of the public participated fully—receivers and processors of grain, merchants of grain, boards of trade, cooperative groups, millers, farmers, elevator operators, state regulatory bodies, etc.

The record before the Commission shows conflicting claims as to the amount and the percentage of grain being trucked into the South. In our own case, the barge lines are a very small factor in the transportation to our mill, almost all of our grain being received by truck.

Can it be that an injunction lies to protect certain large grain merchants located on the Tennessee River, a handful of which dominate the grain that is water-arrived, when we—Walley Milling Company and those of the general public similarly situated—are being denied substantial transportation savings that would mean thousands of dollars a year to us? If such injunction lies, there is no remedy either under the statute or at common law for Walley Milling Company, and there is no remedy for the other thousands of people and businesses similarly situated.

The barge lines contend that they have no remedy. While we cannot for a moment concede this to be true, it is true that large segments of the general public who are on the other side of this case from the petitioners can make the same but much more plausible claim. It is our view that no body except the Interstate Commerce Commission, after full hearing and deliberation, is in a position to balance the myriad equities here to find where lies the greater equity. That function belongs to the Commission and to that body alone.

The reason for this is clear. In a case such as this, one of wide geographic interest, participants come from areas far removed from the area served by the respondent Southern railroads. Almost any federal court could be resorted to. The interest of a competing carrier would be entirely different from the interest of a miller or of a grower. Indeed, it is conceivable that many various interests would be in conflict, all with one another. One of this varied group might always be in a position to prove imminent damage. These many courts cannot be expected to view this proceeding with the single-eyed view of the Interstate Commerce Com-

mission. That is far too much to expect. Chaos would be the result. The biggest binge of forum-shopping in history would be unleashed.

In a complex case of this kind where interests inevitably conflict, the result, if the petitioners are upheld, would be that the 95 percent of the public who would benefit from a rate reduction could have it denied them by the 5 percent of the public who would not so benefit. No court could be expected to weigh all the conflicting claims and arguments. Certainly it would be onerous beyond belief to expect all parties who had been before the Interstate Commerce Commission to follow each court case and to participate fully. There are hundreds of small people, people who are those that are meant by the "public" part of the term "public interest", who have a difficult enough time getting their views before the Interstate Commerce Commission. It cannot be expected of them either to forego their rights or to follow various court proceedings in advance of a ruling by the Interstate Commerce Commission on the very question presented, the lawfulness of the rates.

It is our view, and the only view that will stand up under analysis, that Congress meant quite plainly that the I.C.C. was the body entrusted to ascertain the reasonableness of the rates, both increases and reductions, and that that body could prevent rate action by a carrier for seven months' time and no longer. To suggest that a court may enjoin a rate prior to the Commission's examination of it and findings as to it is to suggest that the courts are themselves empowered to find a rate unreasonable in advance of the Commission's own action.

If the view of the petitioners prevails, Walley Milling Company must continue to sustain a loss of $50,000-$75,000 a year, money which the statute clearly provides that we are entitled to. Congress has said that we can be denied a reduction for seven months but not for a longer period unless the Commission has ruled the rate illegal. Carrier-initiated rates are presumptively legal until found to be otherwise. The seven-month period has long since expired. The financial burden continues to be thrust upon us and there is no way for us to recoup this—to us—large sum. For the public there is indeed no remedy. It cannot be that Congress intended the interest of a carrier or even of a group of carriers to transcend the interest of the general public.

WHEREFORE, Walley Milling Company respectfully submits that this court affirm the decisions of the courts below.

Respectfully submitted,

JOHN W. VARDAMAN
1014-17 Commercial National
Bank Building
Anniston, Alabama
Attorney for Walley Milling Company

Of Counsel:

MERRILL, MERRILL, VARDAMAN
& WILLIAMS
1014-17 Commercial National
Bank Building
Anniston, Alabama